

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	MB Docket No. 04-232
Retention by Broadcasters of Program)	DA 04-2256
Recordings)	

COMMENTS OF AMERICAN MEDIA SERVICES, LLC

American Media Services, LLC ("AMS"), through counsel, hereby comments on the above-referenced Notice of Proposed Rulemaking (the "NPRM"), adopted by the Commission on June 21, 2004, to determine the scope of a new rule, if any, that would require broadcast licensees to retain recordings of their broadcast program material.

AMS opposes any requirement that broadcasters retain program recordings. First, as a longtime investor in, parent company or owner of smaller market stations, AMS recognizes the disproportionate burden that the fixed costs of installing and maintaining equipment and recordings will place on lower-budget operations. For instance, installation of digital recording equipment and maintaining 16 hours of daily program recordings, as the Commission proposes, may cost a stand-alone station more than \$12,000 in the first year of operation. While a popular major market station that might charge hundreds of dollars for a spot during prime time might be able to absorb such costs, smaller stations that measure their commercial spot prices in single and double digits will suffer immense economic harm from this proposed regulatory burden. AMS is aware of many smaller-market stations whose revenues do not exceed \$100,000 annually; a \$12,000 cost could be crippling to a business operating on such a

tight margin. Many noncommercial stations will also be hard-pressed to raise the additional funds needed to meet any recording retention mandate.

What will happen, of course, is that funds required to meet any recording retention mandate will be diverted from other station activities, since advertising rates are market driven and cannot necessarily be raised to cover such costs. Therefore, many stations will be forced to cut local staffing and increase voice-tracking or satellite-delivered programming, curtail local news gathering or event coverage, offer fewer opportunities for sponsorship of community events or take other steps that will diminish service to their communities – all because of the need to maintain cash flow diverted to meet a new recording retention mandate.

If broadcast obscenity, indecency or profanity were quantifiably widespread, the Commission might be justified in imposing such burdens as part of its duty to regulate the nation's airwaves in the public interest, convenience and necessity. But the proposed burden is not necessary because only a fraction of the nation's broadcasters offer this type of programming. Those stations that skirt the regulatory line already have an incentive to record. They need evidence to protect themselves against complaints – evidence that shows their programming complies with Commission rules despite listener or activist complaints. Imposing a recording retention burden on every station, when only some are airing this sort of programming, penalizes everyone when the Commission is concerned only with the actions of a few.

Moreover, the Commission will be multiplying its own adjudication burdens if it imposes a recording retention requirement. Those filing complaints are likely to dispute that exculpatory recordings are genuine, accurate, and have not been edited. The

Commission would be forced to take expert testimony on the recorded evidence or divert its limited engineering resources to recording verification – or possibly add to its already overflowing litigation burden in courts around the country.

Indeed, as it now stands, individual complaints about broadcast material are most often the result of coordinated action by an activist organization or are filed directly by activist groups. These activists are keenly aware of the need to provide sufficient evidence – be it recordings or transcripts – and they make sure that any evidence is sufficient to meet FCC procedural requirements. Shifting the evidentiary burden to broadcasters will not, then, bring more bona fide complaints to the Commission's attention. Instead, it will encourage the reckless filing of complaints because initiating enforcement inquiries will no longer require evidence; investigative action could commence, instead, after a mere assertion based on no more than someone's mistaken belief or pure animus. This is hardly the kind of enforcement regime that the Commission would want to impose on all of the nation's broadcasters when only a few are guilty of broadcasting obscenity, indecency or profanity.

One solution that the Commission should consider would be to impose recording retention requirements on specific stations or licensees in the course of enforcement actions. Such recording retention requirements could be imposed together with forfeitures or admonitions. In this way, the Commission could spare the vast majority of broadcasters who do not impermissibly broadcast indecent or profane materials from the economic burden of recording retention and, instead, focus these additional enforcement measures on those whose actions require such draconian measures.

CONCLUSION

The Commission should only impose this expensive new regulatory burden on the minority of licensees that engage in or are charged with the questionable practices at issue. To impose it on all stations is unnecessary and will harm the public interest by siphoning economic resources that are better used for operations and programming. This is especially true in small markets or for stations serving a smaller niche in larger markets. Since the cost of recording retention does not vary by audience reach, the smaller the station's budget, the bigger the impact. Thus, smaller stations –and their listeners – will be adversely affected should the Commission impose this burden in a wholesale fashion on the entire industry.

Respectfully submitted,



Howard M. Weiss
Michael W. Richards
Counsel for American Media Services, LLC

FLETCHER, HEALD & HILDRETH, P.L.C.
1700 North 17th Street
11th Floor
Arlington, VA 22209
(703) 812-0400

August 27, 2004